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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Question of the death penalty

Report of the Secretary-General

Summary

Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty. The present report confirms that the trend towards the universal abolition of the death penalty is continuing. During the reporting period, initiatives restricting the use of the death penalty were also recorded in several de facto abolitionist States, as well as in States that continue to apply the death penalty. Numerous initiatives have also been taken by States to implement the safeguards guaranteeing protection of the rights of those facing the death penalty. However, a minority of States continued to use the death penalty in contravention of international human rights law. As requested in Human Rights Council resolution 22/11, the present report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

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Contents

		Page
I.	Introduction	3
II.	Changes in law and practice	3
	A. Abolition of the death penalty, or initiatives taken for its abolition, including commitments provided to abolish it	3
	B. Restrictions to the scope of the death penalty or limitations of its use	4
	C. International and regional instruments contributing to the abolition of the death penalty	4
	D. Reintroduction of the use of the death penalty, extension of its scope or resumption of executions	5
III.	Information on the use of the death penalty	6
IV.	Safeguards guaranteeing the protection of the rights of those facing the death penalty	7
	A. Restriction of the use of the death penalty to "most serious crimes"	7
	B. Prohibition of the mandatory use of the death penalty	9
	C. Fair trial guarantees	10
	D. Right to seek pardon or commutation	11
	E. Prohibition of public executions	13
V.	Use of the death penalty against children and persons with mental or intellectual disabilities	14
	A. Children	14
	B. Persons with mental or intellectual disabilities	16
VI.	Human rights of children of parents sentenced to the death penalty or executed	16
VII.	Conclusions	17

I. Introduction

1. Pursuant to Human Rights Council decision 18/117, the present report is submitted to update previous reports on the question of the death penalty, including the most recent quinquennial report of the Secretary-General (E/2015/49 and Corr.1). Pursuant to Human Rights Council resolution 22/11, the report also includes information on the human rights of children of parents sentenced to the death penalty or executed.

2. The report covers the period from April 2015 to June 2016 and is based on information received from States and other relevant sources, including national human rights institutions, United Nations agencies, United Nations country teams, international and regional intergovernmental bodies and non-governmental organizations. Attention is drawn to the forthcoming report of the Secretary-General to the General Assembly on a moratorium on the use of the death penalty, which will outline national and international efforts made towards the implementation of General Assembly resolution 69/186 on a moratorium on the use of the death penalty, in which the General Assembly calls upon States, inter alia, to respect international standards that provide safeguards guaranteeing protection of the rights of those facing the death penalty, in particular the minimum standards, as set out in the annex to Economic and Social Council resolution 1984/50 of 25 May 1984.

II. Changes in law and practice

3. Changes in law include new legislation abolishing or reinstating the death penalty, restricting it or expanding its scope, as well as ratification of international and regional human rights treaties that provide for the abolition of the death penalty. Changes in practice comprise non-legislative measures, including executive and judicial measures, reflecting a new approach regarding the use of the death penalty.

A. Abolition of the death penalty, or initiatives taken for its abolition, including commitments provided to abolish it

4. Some 170 States have abolished or introduced a moratorium on the death penalty either in law or in practice, or have suspended executions for more than ten years. In particular, the Congo, Fiji, Madagascar, Mongolia, Nauru and Suriname abolished the death penalty during the reporting period. Côte d'Ivoire enacted a law to eliminate capital punishment from its penal code after it was abolished under the Constitution in 2000. The new Constitution of Nepal, which came into force in September 2015, states that no law shall be made providing for the death penalty. In the United States of America, the State of Nebraska abolished the death penalty.

5. In several other States, legislative and/or judicial processes to abolish the death penalty were initiated. For instance, Burkina Faso, Comoros, Guinea, Kenya and the Republic of Korea considered bills to abolish the death penalty. In early 2016, the Supreme Court of Zimbabwe heard two challenges to the death penalty, regarding its constitutionality[1] and the humanity of extended periods on death row.[2]

[1] Zimbabwe, *Farai Lawrence Ndlovu and Wisdom Gochera v. Minister of Justice, Legal and Parliamentary Affairs*.

B. Restrictions to the scope of the death penalty or limitations of its use

6. In several de facto abolitionist States, as well as in States that continue to apply the death penalty, some noticeable initiatives restricting its use were recorded during the reporting period. In the Central African Republic, new legislation for the establishment of a special criminal court for investigating and prosecuting war crimes, crimes against humanity and serious human rights violations was adopted in 2015 that excluded the death penalty as possible punishment.[1]

7. The Israeli Parliament rejected a bill that would have made it easier for military and district courts to sentence to death those convicted of terrorism offences by allowing the decision on sentencing to be taken by a majority of judges instead of the unanimity currently required.

8. The Law Commission of India published its second report on the death penalty, which concluded that the "death penalty does not serve the penological goal of deterrence any more than life imprisonment" and that the reliance on the death penalty diverted attention from problems in the criminal justice system. The Commission fell short of recommending that the death penalty be abolished for all crimes, instead suggesting that it be retained for terrorism-related offences and waging war.[3]

C. International and regional instruments contributing to the abolition of the death penalty

9. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, which has been ratified by 81 States as at the end of June 2016, is the key international treaty prohibiting the use of the death penalty. In particular, the Optional Protocol is significant as the absence therein of a procedural clause for withdrawal means that once a State has ratified it, the death penalty can never be reintroduced without violating international law.

10. Furthermore, States parties to the Second Optional Protocol to the International Covenant on Civil and Political Rights have an obligation thereunder to take all necessary measures to ensure that the death penalty cannot be reintroduced. Benin, which ratified the Second Optional Protocol in 2012, accepted recommendations under the universal periodic review to amend as soon as possible the draft criminal code and the draft code of criminal procedure to bring them into line with the Optional Protocol (see A/HRC/22/9, para. 108.4). The Human Rights Committee also recommended that Benin adopt the new Criminal Code as soon as possible so as to expressly abolish the death penalty (see CCPR/C/BEN/CO/2, para. 19).

11. Laws authorizing accession to the Second Optional Protocol were adopted in Togo and considered in the Niger. Furthermore, during the universal periodic review process, several States, including Armenia (A/HRC/29/11), the Marshall Islands (A/HRC/30/13 and A/HRC/30/13/Add.1), the Federated States of Micronesia (A/HRC/31/4/Add.1), Myanmar (A/HRC/31/13), Nauru (A/HRC/31/7), Saint Lucia (A/HRC/31/10), Sao Tome and Principe (A/HRC/31/17), Suriname (A/HRC/33/4) and Tajikistan (A/HRC/33/11) accepted recommendations to ratify the Second Optional Protocol.

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[1] Zimbabwe, *Cuthbert Tapuwanashe Chawira and 13 others v. Minister of Justice, Legal and Parliamentary Affairs*.

[2] Organic Law No. 15.003, sect. 59.

[3] Law Commission of India, Report No. 262, The Death Penalty, August 2015, paras. 7.1.1 and 7.2.4.

12. Human rights treaty bodies continued to call for the ratification of the Second Optional Protocol. In its concluding observations on the report of Haiti (see CCPR/C/HTI/CO/1, para. 11), the Human Rights Committee regretted that the ratification of the Second Optional Protocol had recently been withdrawn from the parliament's agenda without satisfactory explanation and recommended that Haiti consider ratifying the Second Optional Protocol as soon as possible. The Committee also recommended that Iraq (see CCPR/C/IRQ/CO/5, para. 28), the Republic of Korea (see CCPR/C/KOR/CO/4, para. 23) and Suriname (see CCPR/C/SUR/CO/3, para. 20) consider acceding to this instrument. The Committee against Torture recommended that the Congo (see CAT/C/COG/CO/1, para. 7) and China (see CAT/C/CHN/CO/5, para. 50) ratify the Optional Protocol.

13. Death sentences should not be carried out as long as international interim measures requiring a stay of execution are in place. Such interim measures are designed to allow review of the sentence before international courts, human rights courts and commissions and United Nations treaty bodies. In paragraph 19 of its general comment No. 33 (2008) on the obligations of States parties under the Optional Protocol to the International Covenant on Civil and Political Rights, the Human Rights Committee noted that States have a good faith duty to comply with those measures even in the absence of a specific treaty provision to that effect. Belarus executed a death row prisoner whose complaint was before the Human Rights Committee, despite a specific request from the Committee for a stay of execution pending the examination of the petition.[7] Non-compliance with the Committee's request for interim measures constitutes a violation by Belarus of its obligations under the Optional Protocol to the International Covenant on Civil and Political Rights to which it is a State party.

14. In article 11 of the European Convention on Extradition, it is stated that "if the offence for which extradition is requested is punishable by death under the law of the requesting Party, and if in respect of such offence the death-penalty is not provided for by the law of the requested Party or is not normally carried out, extradition may be refused unless the requesting Party gives such assurance as the requested Party considers sufficient that the death-penalty will not be carried out". The Council of Europe reported that the accession of non-member States to this Convention requires a commitment, at the time of acceding to the Convention, to make a declaration on the non-execution of the death penalty. Under that condition, the Republic of Korea acceded to the Convention. A similar provision appears in article 21 (3) of the Council of Europe Convention on the Prevention of Terrorism, which has been ratified by 34 States to date. During the period in question, the Convention entered into force in Malta and Portugal on 1 December 2015 and was signed by the European Union.[8]

D. Reintroduction of the use of the death penalty, extension of its scope or resumption of executions

15. During the reporting period, the scope of the death penalty was expanded in a few States. The Iraqi Cabinet approved a proposed amendment to the Code of Criminal Procedure that expedites the implementation of death sentences by granting the Minister of Justice the power to ratify executions if the President does not ratify, pardon, issue clemency or commute final death sentences within 30 days. In Nigeria, two states

[7] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19958&LangID=E.

[8] The submission of the Council of Europe is on file with the Secretariat and is available for consultation.

Iraq, Ministry of Justice, "Cabinet vote on the draft law amending the Code of Criminal Procedure", 16 June 2015. Available from www.moj.gov.iq/view.1601/.

introduced laws prescribing the death penalty for kidnapping and several other states increasingly resorted to the death penalty, particularly to punish kidnapping.

16. Several States adopted new laws on counter-terrorism allowing the death penalty for vaguely and broadly defined terrorism-related crimes. Cameroon, Chad, Guyana and Tunisia enacted laws providing for the death penalty for a number of crimes related to terrorist activities. Pakistan adopted the Constitution (Twenty-First Amendment) Act of 2015 and the Pakistan Army (Amendment) Act 2015, allowing for the establishment of new military courts with the power to impose death sentences on civilians suspected of terrorism-related offences. Following the adoption of a new terrorism law, Chad resumed execution in August 2015.[5]

17. Other States also adopted new laws introducing the death penalty for other crimes. Bangladesh adopted the Coast Guard Act 2016, which provides for the death penalty for mutiny. Ethiopia proposed a new law on human trafficking and migrant smuggling, which provides a range of punishments, including the death penalty in cases where the victims suffered severe injury or death. Oman amended its law on combating drugs and narcotics, introducing the death penalty for a greater range of drug-related offences.

18. In the United States of America, the State of North Carolina enacted House Bill 774 aimed at the resumption of executions in the State. The law allows for the participation of medical professionals other than a physician in executions, contrary to medical ethics codes. It also allows the authorities to keep confidential any identifying information of any person or entity involved in the manufacture, preparation or supply of drugs used for lethal injection, in an effort to curtail litigation on this matter. Legislators in the State of Texas also voted in favour of a law to allow for secrecy on the providers of drugs used for lethal injections. The States of Oklahoma and Utah amended their legislation to allow for the use of nitrogen gas and firing squads to carry out executions, should lethal injection procedures not be implementable.

III. Information on the use of the death penalty

19. In its resolution 30/5 adopted in September 2015, the Human Rights Council emphasized that lack of transparency in the use of the death penalty had direct consequences for the human rights of the persons sentenced to death as well as for other affected persons. The Council called upon States that had not yet abolished the death penalty to make available relevant information, disaggregated by sex, age and other applicable criteria, with regard to their use of the death penalty, inter alia, the number of persons sentenced to death, the number of persons on death row, the number of executions carried out and the number of death sentences reversed, commuted on appeal or in which amnesty or pardon had been granted, which could contribute to informed and transparent national and international debates, including on the obligations of States with regard to the use of the death penalty.

20. As noted by the Secretary-General in previous reports (A/HRC/4/78, A/HRC/8/11, A/HRC/12/45, A/HRC/15/19, A/HRC/18/20, A/HRC/21/29, A/HRC/24/18 and A/HRC/27/23), it is difficult to obtain up-to-date and accurate global figures on the application of the death penalty, owing to the continued lack of transparency on the part of some Governments. In some countries, such as Belarus, China and Viet Nam, data on the use of the death penalty continues to be classified as a State secret, with disclosure constituting a criminal offence. Furthermore, information regarding the actual date of

[5] See www.un.org/apps/news/story.asp?NewsID=51772#.V4NlmU1f3cs.

executions is reportedly withheld from family members and lawyers of death row prisoners until the completion of the executions in some States, including Belarus,[9] Indonesia, Japan, Malaysia, South Sudan and Viet Nam.

21. Difficulties in obtaining information are compounded in countries affected by conflict, where it may not be possible to obtain sufficient reliable information to confirm the number of executions and other relevant details. The United Nations Assistance Mission for Iraq received several reports of executions being carried out, but no confirmation was obtained from the Iraqi authorities. The Office of the United Nations High Commissioner for Human Rights expressed its concern with regard to the fact that the Iraqi Ministry of Justice had ceased to communicate information to the United Nations in relation to the carrying out of executions.[10]

22. While examining the report of China, the Committee against Torture expressed concern about the lack of specific data on the application of the death penalty, which prevented it from verifying whether that new legislation was actually being applied in practice (see CAT/C/CHN/CO/5, para. 49). In its concluding observations on the report of Saudi Arabia (see CAT/C/SAU/CO/2, para. 42), the Committee expressed it deep concern about the continued existence of the death penalty and the failure of the State party to provide data requested by the Committee on the number of persons executed or on death row as well as, inter alia, the gender, age, nationality and other relevant demographics of the persons affected, and for what specific offences. The Committee called upon Saudi Arabia, inter alia, to provide disaggregated data on the number of individuals on death row and the number executed, detailing for which offences and whether any minors or persons with mental disabilities had been sentenced to death and/or executed and the other data required (ibid., para. 43).

IV. Safeguards guaranteeing the protection of the rights of those facing the death penalty

A. Restriction of use of the death penalty to "most serious crimes"

23. State parties to the International Covenant on Civil and Political Rights that have not yet abolished the death penalty should only impose it for the "most serious crimes". Crimes not resulting directly and intentionally in death do not meet the threshold of "most serious crimes" under international human rights law.[11] In the same vein, a limited degree of involvement or complicity in the commission of even the most serious crimes, such as providing the physical means for the commission of murder or failing to prevent it, cannot justify the imposition of the death penalty. In draft general comment No. 36 being discussed by the Human Rights Committee, the Committee has stated that States parties are under an obligation to constantly review their criminal laws so as to ensure that the death penalty can be imposed, if at all, only for the most serious crimes and only for their chief perpetrators.

24. Drug-related offences do not meet the criteria for "most serious crimes". There is no persuasive evidence that the use of the death penalty is a greater deterrent than other methods of punishment in eradicating drug trafficking or other drug-related offences, nor

[9] The Special Rapporteur on the situation of human rights in Belarus has expressed concerns on the lack of transparency in the proceedings of the death penalty cases in Belarus (see A/HRC/29/43).
[10] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17051&LangID=E.
[11] See Human Rights Committee, draft general comment No. 36, 2015.

does it protect people from drug abuse. Nevertheless, 33 countries or territories[12] continue to maintain the death penalty for drug-related offences in their legislation. In some countries, drug offences account for the majority of death sentences handed down and executions carried out. During the reporting period, the death penalty was imposed or implemented for drug-related offences in a number of countries, including China, Indonesia, the Islamic Republic of Iran, Kuwait, the Lao People's Democratic Republic, Malaysia, Saudi Arabia, Singapore, Sri Lanka, Thailand, the United Arab Emirates and Viet Nam. Foreign nationals continued to be sentenced to death and executed in cases related to drug trafficking in many countries.

25. United Nations human rights entities continued to address the issue of the use of the death penalty for drug crimes in violation of international law. In its follow-up evaluation of Indonesia, the Human Rights Committee awarded a grade E — the lowest possible evaluation score — for the country's failure to respond to the Committee's recommendation in 2013 to halt the execution of prisoners for drug-related crimes and to amend its legislation accordingly. The United Nations High Commissioner for Human Rights urged the Government of Indonesia to halt execution for drug offences and to conduct a thorough review of all requests for pardon with a view to commutation.[13]

26. During the panel discussion on the impact of the world drug problem on the enjoyment of human rights, held during the thirtieth session of the Human Rights Council, the United Nations Office on Drugs and Crime and the International Drug Policy Consortium, emphasizing that drug control measures must be consistent with international human rights law, encouraged States to abolish the death penalty for drug-related offences, recalling that they are not considered to fall under the category of "most serious crimes" (A/HRC/31/45). Furthermore, in its annual report of 2015, the International Narcotic Control Board recommended that drug control action must be consistent with international human rights standards. The Board advised all countries that continue to retain the death penalty for drug-related offences to consider abolishing capital punishment for this category of offences.[14]

27. During the same panel discussion, a number of States stressed that the death penalty should be abolished for drug-related offences, while others emphasized that their goal was the universal abolition of the death penalty in all circumstances, including for drug users. Colombia, for instance, expressed its concern regarding the high number of individuals facing a death sentence for drug-related crimes and proposed an agenda aimed at eliminating the death penalty (A/HRC/31/45).

28. On the occasion of the special session of the General Assembly on the world drug problem, a group of special procedure mandate holders and other independent experts reiterated that the death penalty for drug offences did not meet the threshold of "most serious crimes". They expressed collective disappointment that many States had failed to bring their national policies into accordance with that standard, emphasized that the application of capital punishment for drug-related offences directly contravened

[12] Bahrain, Bangladesh, Brunei Darussalam, China, Cuba, Democratic People's Republic of Korea, Egypt, India, Indonesia, Iran (Islamic Republic of), Iraq, Kuwait, Lao People's Democratic Republic, Libya, Malaysia, Myanmar, Oman, Pakistan, Qatar, Republic of Korea, Saudi Arabia, Singapore, South Sudan, Sri Lanka, Sudan, Syrian Arab Republic, Thailand, United Arab Emirates, United States of America, Viet Nam and Yemen, as well as Gaza (State of Palestine) and Taiwan Province of China.

[13] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15654&LangID=E.

[14] See www.incb.org/documents/Publications/AnnualReports/AR2015/English/AR_2015_E.pdf.

international human rights law and urged States to make immediate commitments to its full abolition.[15]

29. The death sentence was also imposed in several countries for other offences that do not meet the threshold of "most serious crimes" under international law, including for economic crimes, such as embezzlement and taking bribes, and arson, adultery, apostasy and crimes of blasphemy. Several States also continued to use the death penalty for overly broad and vaguely defined terrorism-related crimes. In the report of the Secretary-General on a moratorium on the use of the death penalty, to be submitted to seventy-first session of the General Assembly, trends on the use of the death penalty for other crimes that do not meet the threshold of "most serious crimes" will be furthered discussed.

B. Prohibition of the mandatory use of the death penalty

30. According to the jurisprudence of human rights mechanisms, the mandatory use of the death penalty is not compatible with the limitation of capital punishment to the "most serious crimes". There have been some positive developments towards putting an end to the mandatory use of the death penalty in a few countries. In Uganda, a law was passed substituting the mandatory death sentence with a discretionary death sentence for any terrorism-related offences that result in death[16] and abolishing the death penalty for all other terrorism offences. A bill was also tabled before Parliament seeking to fully remove the mandatory death penalty and to restrict the application of the death penalty to the most serious crimes. In Malaysia, the Government plans to table a bill in 2016 to abolish the mandatory death penalty for drug-related offences.

31. The Supreme Court of Bangladesh held that the Suppression of Women and Children (Special Provisions) Act, 1995, under which the mandatory death penalty was provided for, was inconsistent with several provisions of the Constitution. In reaching that conclusion, the Court reiterated that mandatory sentences reduce the courts to a "rubberstamp of the legislature" and impede their power to take into account all circumstances surrounding the offence when deciding on a sentence.[17] The Supreme Court of Kenya heard a constitutional challenge to the mandatory death penalty,[18] regarding whether the imposition of the death penalty for individuals convicted for murder, irrespective of the circumstances of the case and of any mitigating features, is consistent with the right to life and the prohibition of inhuman and degrading punishment under the Kenyan Constitution.

32. Nevertheless, several States, including the Islamic Republic of Iran, Kenya, Malaysia, Nigeria, Pakistan and Singapore, reportedly continued to impose mandatory sentences.[19] The Special Rapporteur on extrajudicial, summary or arbitrary executions expressed his concern that, despite recent reforms, the legislation of Singapore still provided for the mandatory death sentence for intentional murder and stated that such

[15] See www.ohchr.org/Documents/Issues/Health/UNGASS-joint_OI_HR_mechanisms_April2016.pdf.

[16] Anti-Terrorism (Amendment) Act 2016.

[17] Bangladesh, *Bangladesh Legal Aid and Services Trust and others v. Government of Bangladesh and others*, judgment of 5 May 2015. Available from http://supremecourt.gov.bd/resources/documents/808470_CivilAppealNo.116of2010.pdf.

[18] Kenya, *Mwangi and Muruatetu v. Republic of Kenya*, petition Nos. 15 and 16 of 2015. See www.deathpenaltyproject.org/news/2037/supreme-court-of-kenya-today-heard-submissions-on-mandatory-death-penalty.

[19] Sadakat Kadri, International Bar Association, "Forced to kill: the mandatory death penalty and its incompatibility with fair trial standards" (International Bar Association, 2016).

mandatory use of the death penalty was incompatible with international law. He urged the Government of Singapore to pursue legal reform that would put an end to mandatory death sentences, in line with international human rights and fair trial standards.[20]

33. Prisoners who have received a mandatory death sentence should promptly have their sentence reviewed by a competent body and have the right to seek pardon or commutation (see CCPR/C/MWI/CO/1/Add.1, para. 11). During the reporting period, a number of initiatives were undertaken to re-sentence those who were the subject of a mandatory death sentence. Those initiatives resulted in the commutation of the death sentence in a number of cases. In Singapore, the High Court commuted a death sentence after the prisoner applied for re-sentencing following the 2012 reforms to mandatory death penalty laws. Courts in Malawi have been conducting sentencing hearings in the cases of prisoners who received mandatory death sentences prior to a 2007 landmark case striking down the mandatory death penalty. Overall, the country's courts have completed 63 hearings, resulting in the immediate release of 51 prisoners in the light of the time they had already spent on death row.

C. Fair trial guarantees

34. The imposition of a death sentence upon the conclusion of a trial in which the provisions of article 14 of the International Covenant on Civil and Political Rights have not been respected constitutes a violation of the right to life.[21] Furthermore, forcing an individual to make or sign, under duress, a confession admitting guilt violates both article 7 (prohibiting torture and inhuman, cruel or degrading treatment) and article 14 (3) (g) (prohibiting compulsion to testify against oneself or confess guilt) of the Covenant.[22]

35. Algeria, Bahrain, the Lao People's Democratic Republic, Lebanon, Morocco and Qatar provided information regarding the legal guarantees and safeguards provided in their respective jurisdictions. Such guarantees and safeguards include the right to public trial, the right to legal representation and counsel, including the provision of a counsel financed by the State, respect for the principle of presumption of innocence, the right to appeal and freedom from torture.[23]

36. The Supreme People's Court of China issued new guidelines aimed at facilitating the participation of defence lawyers during the final review of death sentences. The Court, the Supreme People's Procuratorate, the Ministry of Public Security, the Ministry of State Security and the Ministry of Justice jointly issued another set of guidelines that guarantee the rights of lawyers to have full access to their clients, as well as greater participation by defence lawyers during police investigations. That enhanced safeguard, however, did not extend to cases involving State security, "terrorism" or corruption.

37. However, United Nations human rights mechanisms have continued to express concern over the lack of a fair trial in death penalty cases in a number of States. On several

[20] "UN human rights experts urge Singapore not to execute a Malaysian national", press release, 18 May 2015. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=19988&LangID=E.

[21] Human Rights Committee, communications No. 1044/2002, *Shukurova v. Tajikistan*, Views adopted on 17 March 2006; No. 915/200, *Razmetov v. Uzbekistan*, Views adopted on 30 March 2006; No. 913/2000, *Chan v. Guyana*, Views adopted on 31 October 2005; No. 1167/2003, *Rayos v. Philippines*, Views adopted on 27 July 2004. See also its general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial.

[22] Human Rights Committee, general comment No. 32.

[23] Submissions from those States are in the files of the Secretariat and are available for consultation.

occasions, the Office of the United Nations High Commissioner for Human Rights urged the Government of Bangladesh not to implement death sentences in cases before the country's International Crimes Tribunal, particularly given concerns over the fairness of the trials.[24] The Office stated that, while recognizing the determination to tackle past crimes, the trials conducted before the Tribunal have not met international standards of fair trial and due process. Serious due process concerns, which have been repeatedly raised by various United Nations independent experts, include the lack of adequate access to legal assistance and a lack of equality of arms between the prosecution and the defence, among other issues.[25] On previous occasions, the Office has emphasized that the Tribunal should ensure the highest standards of proceedings if it is to reinforce the rule of law in Bangladesh and the fight against impunity for the atrocities committed in 1971 (see A/HRC/27/23, para. 46).

38. The Office of the United Nations High Commissioner for Human Rights also expressed concern about the imposition of the death penalty by courts in the Gaza Strip in the State of Palestine. The Office condemned the execution of three men by authorities in Gaza, despite serious and widespread concerns that international fair trial standards were not respected.[26] The Office also expressed regret over executions in Afghanistan amid grave concerns regarding compliance with fair trial standards, and reports concerning the widespread use of torture and ill-treatment as a means of extracting confessions.[27]

39. The Special Rapporteur on extrajudicial, summary or arbitrary executions and other special procedure mandate holders of the Human Rights Council expressed concern over the lack of a fair trial in death penalty cases in a number of States, including Afghanistan, Belarus, Chad, the Democratic People's Republic of Korea, Egypt, the Islamic Republic of Iran, Pakistan and Saudi Arabia.

D. Right to seek pardon or commutation

40. Pursuant to article 6 (4) of the International Covenant on Civil and Political Rights, States parties to the Covenant are required to allow individuals sentenced to death to seek pardon or commutation and to ensure that amnesties, pardons and commutations can be granted to them in appropriate circumstances. In accordance with the jurisprudence of the Human Rights Committee, State parties to the Covenant should also ensure that sentences are not carried out before requests for pardon or commutation have been conclusively decided upon,[28] and no category of convicts can be a priori excluded from such measures of relief, nor should the conditions for attainment of relief be ineffective, exceptionally burdensome, discriminatory in nature or applied in an arbitrary manner.[29]

41. During the reporting period, commutations or pardons of death sentences have been granted by both the judiciary and executive authorities. A common reason for commutation by the executive is as a means of enforcing a moratorium on the death penalty. For example, the President of Zambia commuted the death sentences of 332 people to life imprisonment, a decision welcomed in a joint statement by special procedure mandate

[24] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15809&.

[25] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19796&LangID=E.

[26] See www.un.org/apps/news/story.asp?NewsID=54102#.V1aUDk1f3cs.

[27] See www.un.org/apps/news/story.asp?NewsID=53894#.V1aVEU1f3cs.

[28] Communication No. 1043/2002, *Chikunova v. Uzbekistan*, Views adopted on 16 March 2007, para. 7.6, and draft general comment No. 36, 2015.

[29] Communication No. 1132/2002, *Chisanga v. Zambia*, Views adopted on 18 October 2005, para. 7.5, and draft general comment No. 36, 2015.

holders. The Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment stated that, by commuting those death sentences, Zambia had put a stop to mental and physical pain and suffering and taken an important step towards ensuring respect for the inherent dignity of the person. They noted that the decision supported previous steps towards the abolition of capital punishment in Zambia, where a presidential moratorium on the death penalty had been maintained since 1997.[10]

42. Judiciaries in many States tend to commute the death penalty or pardon those sentenced to it in response to doubts about the guilt of the offender, concerns over the application of due process standards, remorse shown by the petitioner or for the rehabilitation of the petitioner. For example, the Supreme Court of Belize commuted the death sentence of the last remaining person on death row, holding that his 13 years on death row amounted to inhuman treatment and rendered his death sentence unlawful. Indian courts commuted to life imprisonment the death sentences of several prisoners, including three prisoners whose mercy petitions the President of India had previously rejected. In Jamaica, the death sentence of the last remaining person on death row was commuted.[11] In Saudi Arabia, the punishment of a woman sentenced to death by stoning for committing adultery was reviewed and commuted by a court.

43. The United Nations human rights treaty bodies continued to recommend that States commute all death sentences. For example, in its concluding observations on the periodic report of the Republic of Korea, the Human Rights Committee recommended, inter alia, the commutation of all death sentences (see CCPR/C/KOR/CO/4, para. 23). The Committee against Torture encouraged China, inter alia, to commute all existing death sentences (see CAT/C/CHN/CO/5, para. 50).

Commutation or clemency/pardon procedure

44. Under article 6 (4) of the International Covenant on Civil and Political Rights, a particular procedure is not prescribed for the exercise of the right to seek pardon or commutation and States parties consequently retain discretion in spelling out the relevant procedures.[12] However, in accordance with the jurisprudence of the Human Rights Committee, such procedures should be specified in domestic legislation (see CCPR/CO/72/GTM, para. 18), and they should not afford the families of victims a preponderant role in determining whether the death sentence should be carried out (see CCPR/CO/75/YEM, para. 15).[13] Furthermore, the Committee has ruled that pardon or commutation procedures must offer certain essential guarantees, including clarity about the processes followed and the substantive criteria applied, a right for individuals sentenced to death to initiate pardon or commutation procedures and to make representations about their personal or other relevant circumstances, a right to be informed in advance when the request will be considered and a right to be informed promptly about the outcome of the procedure.[14]

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[10] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16258&LangID=E.

[11] Jamaica, Court of Appeal, *Moodie v. R.*, ruling delivered on 31 July 2015.

[12] Communication 845/1999, *Kennedy v. Trinidad and Tobago*, Views adopted on 26 March 2002, para. 7.4.

[13] See also Human Rights Committee, draft general comment No. 36, 2015.

[14] See Human Rights Committee, draft general comment No. 36, 2015. See also A/HRC/8/3, para. 67, and report No. 41/00 (Mckenzie et al.) of the Inter-American Court of Human Rights, which prescribes similar procedural guarantees.

45. During the reporting period, legislative initiatives were undertaken in some countries to introduce legal processes to facilitate the application and granting of clemency and/or commutation. The Government of Afghanistan reported that the President was considering the desirability of legal reform, including of the Penal Code and the Criminal Procedure Code, to allow for death sentences to be commuted to life imprisonment. In Guatemala, two draft decrees were submitted to the National Congress that set out a procedure for executive clemency, a final recourse that was already required by law.[14] In the United States of America, the Governor of the State of Georgia signed into law a bill requiring the Board of Pardons and Paroles to improve transparency and provide explanations regarding its decisions when the latter result in the commutation of death sentences. However, that requirement does not extend to cases in which the pardon request is rejected.[15] In the Islamic Republic of Iran, after the new Code of Criminal Procedure came into force, all death sentences became subject to confirmation either by the Head of the Supreme Court or the Prosecutor General, who are entitled to revise or quash the sentence if they find it contravenes Islamic law or that the judge was not competent.

46. In a recent ruling on clemency procedures, the Court of Appeal of Botswana established that there is a constitutional right to petition the President for clemency, and that it is obligatory for a committee to meet to consider every clemency petition. The Court also insisted on certain additional guarantees, such as the need to consider any material provided by the petitioner, the provision of *pro Deo* counsel to advise on and prepare the clemency petition, and affording the petitioner sufficient time and information for him to adequately prepare his application. However, the six-week timeline mandated by the Court will generally not be sufficient to prepare a petition, and the Court also commented that the rules of natural justice do not apply to the committee.

47. In certain cases, individuals sentenced to death reportedly refuse to seek clemency. States should nevertheless provide for mandatory appeals or review with provisions for clemency or pardon in all cases of capital offence.[16] In particular, it should be borne in mind that "death row volunteers" who refuse to seek an appeal or clemency may not have full mental competency when making their decision.[17] Sufficient time must be given to petitioners to exercise the right to seek clemency in order for it to be effective, and it must be clear that the individual has waived his or her right to seek clemency before the execution is carried out. However, certain States continue to allow only very short periods of time in which to file such petitions, for example 7 days in Viet Nam and 14 days in Egypt.

E. Prohibition of public executions

48. In its resolution 30/5, the Human Rights Council recalled the calls to consider whether the use of the death penalty violated the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, inter alia, because of the methods of execution. It further stated that all methods of execution could inflict inordinate pain and suffering, and that the circumstances in which executions were carried out, in particular

[14] See http://elperiodico.com.gt/2016/02/13/opinion/pena-de-muerte/ and www.efe.com/efe/america/politica/piden-en-guatemala-restituir-figura-de-indulto-y-con-ella-la-pena-muerte/20000035-2863701.

[15] United States of America, State of Georgia, House Bill 71 on pardons and paroles, signed on 1 May 2015.

[16] See Economic and Social Council resolution 1989/64.

[17] See John H. Blume, "Killing the Willing 'Volunteers', Suicide and Competency", *Cornell Law Faculty Publications*, paper 16 (2004).

public executions, which implied an undignified exposure of the persons sentenced to death, and secret executions or those with short or no prior warning, added to the suffering of the persons sentenced to death, as well as of other affected persons.

49. Despite the prohibition of public executions in international law, the Islamic Republic of Iran and Saudi Arabia continued to execute death row prisoners in public on a regular basis. In his recent report on the human rights situation in the Islamic Republic of Iran (A/70/352), the Secretary-General noted with concern that the practice of public executions persisted in the country, despite their dehumanizing, cruel, inhuman and degrading effect on the victims and on observers. At least 58 individuals were publicly executed in 2015. In its concluding observations on the third periodic report submitted by the Islamic Republic of Iran, the Human Rights Committee recommended ending that practice (see CCPR/C/IRN/CO/3, para. 12).

V. Use of the death penalty against children and persons with mental or intellectual disabilities

A. Children

50. Pursuant to article 6 of the International Covenant on Civil and Political Rights and article 37 (a) of the Convention on the Rights of the Child, neither capital punishment nor life imprisonment can be imposed for offences committed by persons under 18. Nevertheless, capital punishment for offences committed by children remains lawful in 15 countries.[37]

51. During the reporting period, at least four persons were executed for crimes committed as children in Saudi Arabia and at least three offenders who were under the age of 18 at the time of their arrest remain at imminent risk of execution. In September 2015, three United Nations experts released a statement urging Saudi Arabia to immediately halt the execution of children.[38]

52. In his report to the Human Rights Council on the situation of human rights in the Islamic Republic of Iran, the Secretary General raised concerns about the rate of execution of juvenile offenders in the country (see A/HRC/31/26, paras. 13-15). The Special Rapporteur on the situation of human rights in the Islamic Republic of Iran has reported that the Islamic Penal Code of Iran retains the death penalty for boys of at least 15 lunar years of age and girls of at least 9 lunar years for certain crimes (see A/HRC/31/69, para. 19). There were at least four juvenile executions in 2015 with at least 160 others awaiting the same fate on death row.[39] In Maldives, where the age of criminal responsibility is 15, at least three persons were also sentenced to death for crimes they committed as children,[40] and, as at the end of 2015, six individuals were on death row for offences committed while under the age of 18.[41]

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[37] The Child Rights Information Network has produced reports for the countries included within this figure, available from www.crin.org/node/42131.

[38] See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16487.

[39] See www.amnesty.org/en/documents/mde13/3112/2016/en/.

[40] The original High Court judgment is available in Dhivehi at www.highcourt.gov.mv/dhi/mediamanager/2011-49.pdf.

[41] Amnesty International, *Death sentences and executions* (2015). Available from www.amnesty.org/en/documents/act50/3487/2016/en/.

53. Methods and procedures in some States result in the judgment of juveniles as adults and, subsequently, the subjection of juveniles to the death penalty. In Pakistan, trial courts are obliged to determine the defendant's age. Courts, however, reportedly often fail to undertake that assessment and place the burden of proof of age upon the defendant,[44] despite a significant number of citizens possessing no official documentation with which to prove their age. During the reporting period, cases were reported where proof was presented but disregarded by the court in favour of visual assessments conducted by the police or unverified documentation supplied by the claimant, or where evidence was dismissed due to it being raised at the "incorrect" stage of proceedings. In June 2015, three United Nations independent experts called on Pakistan to halt the execution of Shafqat Hussein, who was convicted of kidnapping and voluntary manslaughter committed as a child following a trial using evidence allegedly obtained through torture.[45] Mr. Hussein was executed by the authorities in August 2015.

54. As stated by the Committee on the Rights of the Child in its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, if there is a possibility that an individual facing the death penalty is a child, they should be treated as such. An individual who says that he or she is a child should be afforded all the special protections and rights contained in the Convention on the Rights of the Child, including the right not to be executed, unless it can be conclusively determined that the individual is an adult. The Committee on the Rights of the Child has also stated, in its general comment No. 10 (2007) on children's rights in juvenile justice, that if there is no proof of age, the individual is entitled to a reliable medical or social investigation that may establish their age and, in the case of conflict or inconclusive evidence, the child shall have the right to the benefit of the doubt.

55. The Supreme Court of Bangladesh ruled that the mandatory death penalty was unlawful during the appeal of a man who was sentenced to death for rape and murder allegedly committed when he was 14 years of age. However, it did not order a re-sentencing of those who had been sentenced to death under the legislation and it appears that children may still be subject to a mandatory death sentence.[46] All individuals, but in particular children, sentenced to death under legislation providing for the mandatory imposition of the death penalty should be re-sentenced through a process that takes into account the personal circumstances of the offender and the particular circumstances of the offence, including its specific aggravating or attenuating elements.[47]

56. While the abolition of, or moratoriums on, the death penalty are welcome developments, concerns remain that they can lead to an increase in the number of juveniles sentenced to life imprisonment. The Special Rapporteur on the question of torture has stated that life imprisonment and lengthy sentences, such as consecutive sentencing, are grossly disproportionate and therefore cruel, inhuman or degrading when imposed on a child (see A/HRC/28/68, para. 74). States should therefore ensure that children are not sentenced to life imprisonment as an alternative to the death penalty.

[44] Submission of Pakistan Justice Project, dated April 2016. The submission is on file with the Secretariat and is available for consultation.

[45] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16046&LangID=E.

[46] Child Rights Information Network, submission to the present report, available at www.crin.org/en/library/publications/death-penalty-submission-secretary-generals-report-death-penalty-2016.

[47] See Human Rights Committee, draft general comment No. 36, 2015. See also communication No. 390/1990, *Eubote v. Zambia*, Views adopted on 31 October 1995, para. 7.2.

B. Persons with mental or intellectual disabilities

57. In accordance with international human rights law, the death penalty should not be imposed on persons with mental or intellectual disabilities. The judiciary in several States took the initiative of addressing the issue of the use of the death penalty against persons with mental or intellectual disabilities, in particular regarding the acceptance of evidence of mental illness. For example, the Judicial Committee of the Privy Council of the United Kingdom of Great Britain and Northern Ireland quashed a death sentence after accepting medical evidence adduced that clearly demonstrated that the accused suffered from chronic schizophrenia.[45] However, presenting such evidence is reportedly hampered by the lack of resources available for obtaining forensic psychiatric and psychological evaluations.

58. Pakistan reportedly executed death row prisoners with mental disabilities. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on the rights of persons with disabilities called on the authorities in Pakistan to protect the right to health of inmates in death row with severe psychosocial disabilities, irrespective of their legal situation, guaranteeing their access to the health services required by their situation. They reminded Pakistan of its obligations under the Convention on the Rights of Persons with Disabilities, to which it is a party. They noted that the Government of Pakistan was bound to respect, in particular, the right to life and the inherent dignity of detainees with disabilities, and must provide reasonable accommodation in detention.[46]

VI. Human rights of children of parents sentenced to the death penalty or executed

59. In its resolution 30/5 on the question of the death penalty, the Human Rights Council acknowledged the rights of children of parents sentenced to death or executed. It called upon States to ensure that children whose parents or parental caregivers were on death row, the inmates themselves, their families and their legal representatives were provided, in advance, with adequate information about a pending execution, its date, time and location, to allow a last visit or communication with the convicted person, the return of the body to the family for burial or to inform them where the body is located, unless that was not in the best interests of the child. In that resolution, the Council built on past consensus language from its resolution 19/37 on the rights of the child.

60. When examining reports of State parties, the Committee on the Rights of the Child continued to address the issue of human rights of children of parents sentenced to the death penalty or executed. For example, in its concluding observations on the periodic report of the United Arab Emirates (CRC/C/ARE/CO/2), the Committee on the Rights of the Child expressed concerns about the impact on children where the death penalty is imposed on their parents and the lack of attention paid to providing psychological support for such children (ibid., para. 51). The Committee recommended that the State take into consideration the existence of children and their best interests when considering the death penalty and provide psychological and other support necessary to children whose parents have been sentenced to death (ibid., para. 52).

[45] Trinidad and Tobago, *Stephen Robinson v. The State (Trinidad and Tobago)*, judgment of 20 July 2015.

[46] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16275&LangID=E.

VII. Conclusions

61. As demonstrated in the present report, initiatives in several countries represent important steps towards universal abolition of the death penalty. It is now beyond question that there is widespread agreement that ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights contributes to the enhancement of human dignity and the progressive development of human rights, and that all measures to abolish the death penalty constitute progress in the enjoyment of the right to life. States that have not yet ratified the Second Optional Protocol should therefore do so without delay.

62. In many countries, the majority of executions are carried out in respect of convictions for drug-related offences. This is despite such offences not meeting the threshold of "most serious crimes" required under the International Covenant on Civil and Political Rights, and despite confirmation from international drug control bodies, including the United Nations Office on Drugs and Crime, that there is no persuasive evidence that the use of the death penalty is a greater deterrent than other methods of punishment in eradicating drug trafficking or other drug-related offences. States should immediately halt the execution of offenders who have been convicted for drug-related crimes and are reminded that the term "most serious crimes" refers to offences of intentional killing only.

63. The mandatory imposition of the death penalty is wholly incompatible with the principle of necessary safeguards to ensure the rights of those sentenced to death. The lack of discretion makes it impossible for the individual circumstances of the offender and the offence to be taken to account and therefore to ensure a fair application of the death penalty. The Secretary-General welcomes the initiatives of those States that have abolished the mandatory death penalty and, in particular, the procedures undertaken in those countries to re-sentence those who had been subjected to the mandatory death penalty, resulting in a significant number of commutations. States who maintain the mandatory death penalty should abolish it immediately and re-sentence those who had been sentenced under it.

64. International law also requires safeguards to be put in place to ensure that those subject to the death penalty are treated fairly and are only executed after it has been proved beyond reasonable doubt that they have committed a most serious crime. One such safeguard is the procedure to request clemency, pardon or commutation, which acts as a final check to ensure that no one is executed contrary to national or international law. However, as outlined in the present report, many States still maintain non-existent or ineffective procedures through which individuals subject to the death penalty can seek clemency or pardon. States should ensure that an effective procedure is available to death row convicts as required under the International Covenant on Civil and Political Rights and elaborated upon in international jurisprudence.

65. Many States continue to execute juvenile offenders despite the clear prohibition in international law. States should immediately re-sentence all juvenile offenders on death row, while ensuring that such individuals do not receive life sentences in place of execution. States should also amend their legislation and relevant rules and procedures to ensure that no child is executed and that no person is executed for a crime committed while under the age of 18. Similarly, in accordance with the relevant jurisprudence, States should not subject people with mental or intellectual disabilities to the death penalty.

66. Lack of information on executed persons has profound consequences for individuals subjected to the death penalty and their close family and friends. Lack of annual data on executions also impedes the effectiveness and transparency of the debate on the abolition of the death penalty as well as efforts to safeguard the right to life. The Secretary-General therefore echoes the call of the Human Rights Council to States that have not yet abolished the death penalty to make available relevant, disaggregated information on the number of executions carried out, reversed or pardoned each year.

67. Concerns remain that those States continuing to implement the death penalty do so in ways that are incompatible with their obligations under international law. Those countries should take heed of recommendations from other States in the universal periodic review process and concluding observations, general comments and other jurisprudence from human rights treaty bodies, as well as recommendations from the special procedure mandate holders of the Human Rights Council, when implementing the death penalty in order to ensure conformity with international standards.